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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,751	01/16/2004	Ray T. Flugger	A-72192/RBC/VEJ	8351
32940	7590	12/13/2005	EXAMINER	
DORSEY & WHITNEY LLP 555 CALIFORNIA STREET, SUITE 1000 SUITE 1000 SAN FRANCISCO, CA 94104			SAN MARTIN, EDGARDO	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary

Application No.

10/759,751

Applicant(s)

FLUGGER, RAY T.

Examiner

Edgardo San Martin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 – 6 and 8 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over White (US 6,470,998) in view of Douglas et al. (US 5,290,974).

With respect to claims 1, 8 and 13, White teaches an apparatus and method of forming it, describing an end cap for an internal combustion engine muffler having a muffler casing defining a muffler chamber (Fig.1, Item 12), the end cap (Fig.1, Items 20 and 21) comprising an end wall having an aperture; a mounting structure (Fig.5, Item 27) dimensioned and configured for securing the end wall to an end of the muffler casing; and a tubular member (Fig.6, Item 23) extending from the end wall adjacent to and surrounding the aperture, the tubular member and the aperture defining an inlet/outlet port for the muffler chamber dimensioned and configured to receive an exhaust pipe (Figs.1, 5 and 6; Col.4, Line 50 – Col.5, Line 19); but fails to explicitly disclose wherein the end wall, the mounting structure and the tubular member are monolithically formed with the end wall.

Nevertheless, Douglas et al. teaches wherein a mounting structure and a tubular member (Fig.4, Item 46) are monolithically formed with an end wall (Fig.4, item 44) of a muffler (Col.5, Lines 22 – 30).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Douglas et al. monolithic end wall configuration with the White design because the monolithic configuration would provide a quicker process of manufacturing the muffler and muffler parts, economizing time and cost, increasing the efficiency of the manufacturing process.

With respect to claims 2 and 3, White teaches wherein the end wall includes a peripheral shoulder extending along at least a portion of a periphery of the end wall; and wherein the peripheral shoulder defines an stepped land and a substantially flat outer surface (Figs.13 and 14; Col.5, Lines 20 - 28).

With respect to claims 4 – 6, 16 and 17, the Examiner considers that White teaches the limitations described in the claims (Figs. 5, 6, 9 and 10).

With respect to claims 9 – 12, 18 and 19, the Examiners takes official notice that it is well known in the art of metal working to employ the processes of stamping and deep drawing to give a desired shape to a metal material.

With respect to claim 13, White teaches a forward end cap and a rearward end cap (Fig.1, Items 20 and 21).

With respect to claim 14, White teaches wherein the casing includes an oblong tubular member defining the muffler chamber (Figs. 1 and 3).

With respect to claim 15, White teaches wherein the forward mounting structure includes a forward mounting flange extending around a periphery of the forward end wall welded to the forward end of the casing, and the rearward mounting structure includes a rearward mounting flange extending around a periphery of the rearward end and welded to the rearward end of the casing (Col.5, Lines 10 – 15).

Response to Arguments

2. Applicant's arguments filed on September 22, 2005 have been fully considered but they are not persuasive. The Examiner considers that the obvious combination of the patents to White and Douglas et al., teach the limitations described in the claims as discussed above. The Examiner considers that both White and Douglas et al. teach the inlet and outlet ports of the muffler to be dimensioned and configured to receive an exhaust pipe, furthermore, any person with ordinary skill in the art would acknowledge that muffler's ports are dimensioned and configured to receive an exhaust pipe in order to direct the exhaust gases from the engine through the muffler and further to the outside of the system.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571)272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Edgardo San Martin
Primary Examiner
Art Unit 2837
Class 181
December 10, 2005